

AF/346
Docket No.
1617.00001

TRANSMITTAL OF APPEAL BRIEF (Small Entity)

Re Association Of: Joseph R. LaLonde

Serial No.
09/910,114

Filing Date
July 20, 2001

Examiner
J. Moy

Group Art Unit
3727

Invention: HOLDER FOR ASSISTING IN HOLDING PAINT CONTAINER

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TO THE COMMISSIONER FOR PATENTS: TECHNOLOGY CENTER R3700

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:

Applicant is a small entity under 37 CFR 1.9 and 1.27.

A verified statement of small entity status under 37 CFR 1.27:

☐ is enclosed.

☐ has already been filed in this application.

The fee for filing this Appeal Brief is: \$165.00

☒ A check in the amount of the fee is enclosed.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

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Signature

Dated: February 13, 2004

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I certify that this document and fee is being deposited on February 13, 2004 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit: 3727
Examiner: J. Moy
Applicant(s): Joseph R. LaLonde
Serial No.: 09/910,114
Filing Date: July 20, 2001
For: HOLDER FOR ASSISTING IN HOLDING
PAINT CONTAINER

APPEAL BRIEF

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FEB 24 2004

LOGY CENTER R3700

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

By Notice of Appeal filed December 15, 2003, Applicant has appealed the Final Rejection dated June 13, 2003 and submits this brief in support of that appeal.

REAL PARTY IN INTEREST

The real party in interest is the Assignee, The Painter's Thumb, LLC.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences regarding the present application.

STATUS OF CLAIMS

Claim 1 has been rejected.

Claim 2 has been canceled.

CERTIFICATE OF MAILING: (37 C.F.R. 1.8) I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service with sufficient postage as First Class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on February 13, 2004, by Daniel H. Bliss

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Claims 3 through 5 have been rejected.

Claim 6 has been canceled.

Claim 7 has been rejected.

Claims 8 and 9 have been canceled.

Claims 10 through 14 have been rejected.

Claims 15 and 16 have been canceled.

Claim 17 has been rejected.

Claim 18 has been canceled.

Claims 19 through 23 have been rejected.

Claims 1, 3 through 5, 7, 10 through 14, 17, and 19 through 23 are being appealed.

STATUS OF AMENDMENTS

A Final Office Action dated June 13, 2003 rejected claims 1, 3 through 5, 7, 10 through 14, 17, and 19 through 23. A Notice of Appeal and a Request for a Three Month Extension of Time, along with the requisite fees, were filed on December 15, 2003. The Appeal Brief, along with the requisite fee, is submitted herewith.

SUMMARY OF THE INVENTION

The present invention is a holder 10 for assisting in holding a paint container 12. The paint container 12 is of a "can" type and includes a closed end or bottom 14, an annular side 16 generally perpendicular to the bottom 14, and an open end or top 18 forming an interior chamber 20 for holding paint 22 therein. The paint container 12 further includes a handle 24

having a generally inverted "U" shape pivotally attached to the side 16 by suitable means such as brackets 26.

The holder 10 includes a sleeve 30 to receive a thumb of a person. The sleeve 30 is generally cylindrical in shape, but may have any suitable shape, to receive a thumb of a hand of a person. The sleeve 30 has a wall 32 that extends longitudinally to form a hollow interior 34 to receive the thumb. The sleeve 30 has a first end 36 that is open and a second end 38 that is open.

The sleeve 30 may have a height greater than a width thereof and may be concave on opposed sides of the wall 32. The sleeve 30 is made of a flexible material such as vinyl or leather to allow the wall 32 to flex. The sleeve 30 may be made as one continuous unitary piece or as one piece that is attached together at the ends by suitable means such as stitching or two separate pieces attached together by suitable means such as stitching. The sleeve 30 may also be extruded from a plastic material.

The holder 10 also includes a securing device or retainer 40 for retaining the handle 24 of the paint container 12. The retainer 40 has an inverted and generally "U" shaped wall 42 extending from the sleeve 30 to secure to the handle 24 of the paint container 12. The wall 42 of the retainer 40 has a first end 44 attached to the wall 32 of the sleeve 30 by suitable means such as stitching, an adhesive, or molded as one-piece therewith. The wall 42 of the retainer 40 has a second end 46 that contacts the first end 44 and extends outwardly away from first end 44 to receive the handle 24 therebetween. The retainer 40 is made of a spring material to allow the handle 24 of the paint container 12 to move the second end 46 away from the first end 44 and be disposed in a hollow interior 48 thereof and allow the second end 46 to return to its original position. The retainer 40 may be attached to the sleeve 30 in any suitable manner or be molded as part of the sleeve 30 to be a monolithic structure being integral, unitary, and one-piece.

In operation, the paint container 12 contains paint 22 in the interior 20. A person inserts a thumb 50 of their hand 52 into the open end 36 of the holder 10. The person moves the holder 10 on the hand 52 toward the handle 24 of the paint container 12 such that the handle 24 is disposed between the first end 44 and second end 46 of the retainer 40. The person moves the holder 10 further such that the second end 46 is deflected by the handle 24 away from the first end 44 and the handle 24 is disposed in the hollow interior 48. The person places a remainder of the hand 52 such as either one or both their other fingers 54 or palm 56 underneath the bottom 14 of the paint container 12 in an “underhand” holding technique. Thus, in holding the paint container 12, the thumb 50 is disposed in the holder 10, the retainer 40 retains the handle 24 of the paint container 12, and the fingers 54 or palm 56 are underneath the paint container 12. In this manner, the weight of the paint 22 in the paint container 12 can be securely held by one hand 52 and the thumb 50 is physically isolated from the handle 24 of the paint container 12 with little direct pressure on it due to the weight or force of the paint 22. As such, more paint can be held in the paint container 12 without placing any additional direct pressure on the thumb 50 while the thumb 50 and holder 10 stabilize the paint container 12.

ISSUE

The issue in this Appeal is statutorily formulated in 35 U.S.C. § 103. Specifically, the issue is whether the claimed invention of claims 1, 3 through 5, 7, 10 through 14, 17, and 19 through 23 are obvious and unpatentable under 35 U.S.C. § 103 over Skelton (U.S. Patent No. 5,092,481).

GROUPINGS OF CLAIMS

Claims 1, 3 through 5, 7, and 10 through 13 stand or fall together in regard to the rejection under 35 U.S.C. § 103.

Claims 14, 17, and 19 through 22 stand or fall together in regard to the rejection under 35 U.S.C. § 103.

Claim 23 stands or falls together in regard to the rejection under 35 U.S.C. § 103.

ARGUMENT

As to patentability, 35 U.S.C. § 103 provides that a patent may not be obtained:

If the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Id.

The United States Supreme Court interpreted the standard for 35 U.S.C. § 103 in Graham v. John Deere, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). In Graham, the Court stated that under 35 U.S.C. § 103:

The scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined. 148 U.S.P.Q. at 467.

Using the standard set forth in Graham, the scope and content of the prior art relied upon by the Examiner will be determined.

U.S. Patent No. 5,092,481 to Skelton discloses a method and apparatus for steadily holding a container. A loop 10 consists of a strap of flexible material such as

polypropylene webbing having a swatch 20 of nylon based hook-type fasteners located on one side of the strap at one end thereof and a swatch 22 of nylon based loop fasteners located on the other side of the strap at the other end thereof. The loop 10 formed by forming the strap into a loop and then pressing swatches 20 and 22 together so that the hook fasteners engage the loop fasteners. FIGS. 8 and 9 illustrate a loop 50 or thumb engaging means 50 which is integral with a swing handle 52. FIG. 10 illustrates a rigid hook-shaped member 60 having an end 62 which is looped about the container's handle and thus is pivotally and slideably secured to the swing handle. The hook-shaped member 60 has a hook-shaped free end 64 for receiving a thumb of a person's hand. FIG. 11 illustrates a double looped strap of flexible material such as polypropylene webbing. Strap 70 is provided with a first loop 72 which is looped about the swing handle of the container and a second looped end 74 for receiving the thumb of a hand. The loops are formed by stitching (see stitching 76) opposite sides of the strap 70 together.

In contradistinction, claim 1 claims the invention as a holder (10) for assisting in holding a paint container (12) including a cylindrical sleeve (30) adapted to receive a thumb of a hand and having a longitudinal axis. The holder (10) also includes a retainer (40) having a wall (42) with a first end (44) connected to the sleeve (30). The first end (44) is fixed relative to the sleeve (30). The wall (42) has a second end (46) extending generally perpendicular to the longitudinal axis of the sleeve (30) to overlap a circumferential portion of the sleeve (30). The retainer (40) is adapted to be attached to and detached from a handle (24) of a paint container (12), whereby the retainer (40) is attached to the handle (24) and the sleeve (30) receives the thumb of the hand to allow a weight of the paint container (12) to be transferred to a remainder of the hand supporting at a bottom of the paint container (12).

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103(a), it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that “ [a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” In re Rinehart, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) (“In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.”)

As to the differences between the prior art and the claims at issue, the primary reference to Skelton ‘481 merely discloses a method and apparatus for steadily holding a container in which a loop consists of a strap of flexible material having a swatch of nylon based hook-type fasteners located on one side of the strap at one end thereof and a swatch of nylon based loop fasteners located on the other side of the strap at the other end thereof or a rigid hook-shaped member having an end looped about the container’s handle or a double looped strap of flexible material such as polypropylene webbing with a first loop looped about the swing handle and a second looped end for receiving the thumb of a hand. Skelton ‘481 lacks a cylindrical

sleeve and a retainer having a wall with a first end connected and fixed relative to the sleeve and a second end extending generally perpendicular to a longitudinal axis of the sleeve to overlap a circumferential portion of the sleeve in which the retainer is adapted to be attached to and detached from a handle of a paint container. In Skelton '481, there is no single embodiment that has a cylindrical sleeve and a retainer extending perpendicular to a longitudinal axis of the sleeve to overlap a circumferential portion of the sleeve in which the retainer is adapted to be attached to and detached from a handle of a paint container.

As to the level of ordinary skill in the pertinent art, Skelton '481 merely discloses a method and apparatus for steadily holding a container in which a loop consists of a strap of flexible material having a swatch of nylon based hook-type fasteners located on one side of the strap at one end thereof and a swatch of nylon based loop fasteners located on the other side of the strap at the other end thereof. However, there is absolutely no teaching of a level of skill in the paint container art to include a cylindrical sleeve and a retainer having a wall with a first end connected and fixed relative to the sleeve and a second end extending generally perpendicular to a longitudinal axis of the sleeve to overlap a circumferential portion of the sleeve in which the retainer is adapted to be attached to and detached from a handle of a paint container. In fact, Skelton '481 teaches away from this feature by disclosing that a rigid hook-shaped member 60 having an end 62 that is fixed about the container's handle and thus is not detachable from the swing handle. Further, there is no motivation in the art to modify Skelton '481 because Skelton '481 operates in an entirely different manner. Contrary to the Examiner, it is not obvious to substitute for the hook 64 of Figure 10 of Skelton '481 with the thumb sleeve shown in Figure 11 of Skelton '481 because such a substitution, if possible, would not allow the rigid hook shaped member 60 to be attached to the cloth strap 70 and/or the end 62 of the member 60 to be attached

to and detached from the swing handle 12. In Skelton '481, in the embodiments of FIGS. 10 and 11, both the ends 62 and 72 are permanently attached to the handle of the container and cannot be removed from the handle of the paint container. The reference, if modifiable, fails to teach or suggest the combination of a holder for assisting and holding a paint container including a cylindrical sleeve and a retainer having a wall with a first end connected and fixed relative to the sleeve and a second end extending generally perpendicular to a longitudinal axis of the sleeve to overlap a circumferential portion of the sleeve in which the retainer is adapted to be attached to and detached from a handle of a paint container as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness.

The present invention sets forth a unique and non-obvious combination of a holder for assisting and holding a paint container including a cylindrical sleeve and a retainer having a wall with a first end connected and fixed relative to the sleeve and a second end extending generally perpendicular to a longitudinal axis of the sleeve to overlap a circumferential portion of the sleeve in which the retainer is adapted to be attached to and detached from a handle of a paint container. Advantageously, the holder allows a paint container, filled with paint, to be put down quickly, if needed, allows more paint to be held in the paint container without placing direct pressure on the thumb, and is relatively inexpensive to make and use, and if damaged, to be replaced relatively quickly and inexpensively.

Obviousness under § 103(a) is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988)), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. The Examiner may not, because he/she doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the

factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967). Because the Examiner has not provided a sufficient factual basis that is supportive of his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejection of claim 1 is improper.

Against this background, it is submitted that the present invention of claim 1 is not obvious in view of Skelton '481. The reference fails to teach or suggest the combination of a holder for assisting and holding a paint container of claim 1. Therefore, it is respectfully submitted that claim 1 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

The law is clear that a claim in dependent form shall be construed to incorporate by reference all of the limitations of the claim to which it refers. 35 U.S.C. § 112, ¶ 4. Dependent claims 3 through 5, 7, and 10 through 13 perfect and further limit independent claim 1. Claim 3 defines that the sleeve is generally tubular in shape. Claim 4 defines that the sleeve extends longitudinally to form a hollow interior. Claim 5 defines that the sleeve has at least one open end adapted to allow the thumb of the hand to extend into the hollow interior. Claim 7 defines that the sleeve is made of a flexible material. Claim 10 defines that the retainer has a general "U" shape. Claim 11 defines that the retainer is made of a spring material. Claim 12 defines that the first end and the second end form a hollow interior therebetween. Claim 13 defines that the second end is movable relative to the first end. Based on the above, it is respectfully submitted that claims 3 through 5, 7, and 10 through 13 are not obvious and are allowable over the rejection under 35 U.S.C. § 103.

As to independent claim 14, claim 14 claims the invention as a holder (10) for assisting in holding a paint container (12) including a cylindrical sleeve (30) extending longitudinally to form a hollow interior (34) with at least one open end (36,38) adapted to receive

a thumb of a hand. The sleeve (30) is unitary circumferentially. The holder (10) also includes a retainer (40) extending from and being unitary and one-piece with the sleeve (30). The retainer (40) is adapted to be attached to and detached from a handle (24) of the paint container (12), whereby the retainer (40) is attached to the handle (24) and the sleeve (30) receives the thumb of the hand to allow a weight of the paint container (12) to be transferred to a remainder of the hand supporting a bottom of the paint container (12).

Skelton '481, either alone or modified, does not teach or suggest the claimed invention of claim 14. Specifically, Skelton '481 merely discloses a method and apparatus for steadily holding a container in which a loop consists of a strap of flexible material having a swatch of nylon based hook-type fasteners located on one side of the strap at one end thereof and a swatch of nylon based loop fasteners located on the other side of the strap at the other end thereof or a rigid hook-shaped member having an end looped about the container's handle or a double looped strap of flexible material such as polypropylene webbing with a first loop looped about the swing handle and a second looped end for receiving the thumb of a hand. Skelton '481 lacks a cylindrical sleeve being unitary circumferentially and a retainer extending from and being unitary and one-piece with the sleeve to be attached to and detached from the handle of the paint container. In Skelton '481, there is no single embodiment that has a cylindrical sleeve being unitary circumferentially and a retainer extending from and being unitary and one-piece with the sleeve to be attached to and detached from a handle of a paint container. There is absolutely no teaching of a level of skill in the paint container art to include a cylindrical sleeve being unitary circumferentially and a retainer extending from and being unitary and one-piece with the sleeve to be attached to and detached from the handle of the paint container. Contrary to the Examiner's opinion, it is not obvious to modify Skelton '481 because Skelton '481 operates in an entirely

different manner. Contrary to the Examiner, it is not obvious to substitute for the hook 64 of Figure 10 of Skelton '481 with the thumb sleeve shown in Figure 11 of Skelton '481 because such a substitution, if possible, would not allow the rigid hook shaped member 60 to be unitary and one-piece with the cloth strap 70 and/or the end 62 of the member 60 to be attached to and detached from the swing handle 12. In Skelton '481, in the embodiments of FIGS. 10 and 11, both the ends 62 and 72 are permanently attached to the handle of the container and cannot be removed from the handle of the paint container. The Examiner may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967).

The present invention sets forth a unique and non-obvious combination of a holder for assisting and holding a paint container including a cylindrical sleeve being unitary circumferentially and a retainer extending from and being unitary and one-piece with the sleeve to be attached to and detached from a handle of a paint container. Advantageously, the holder that allows a paint container, filled with paint, to be put down quickly, if needed, allows more paint to be held in the paint container without placing direct pressure on the thumb, and is relatively inexpensive to make and use, and if damaged, to be replaced relatively quickly and inexpensively. The reference, if modifiable, fails to teach or suggest the combination of a holder for assisting and holding a paint container including a cylindrical sleeve being unitary circumferentially and a retainer extending from and being unitary and one-piece with the sleeve to be attached to and detached from a handle of a paint container as claimed by Applicants.

Further, the CAFC has held that "[t]he mere fact that prior art could be so modified would not have made the modification obvious unless the prior art suggested the

desirability of the modification". In re Gordon, 733 F.2d 900, 902, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984). The Examiner has failed to show how the prior art suggested the desirability of modification to achieve Applicant's invention. Thus, the Examiner has failed to establish a case of prima facie obviousness.

Against this background, it is submitted that the present invention of claim 14 is not obvious in view of Skelton '481. The reference fails to teach or suggest the combination of a holder for assisting and holding a paint container of claim 14. Therefore, it is respectfully submitted that claim 14 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

Dependent claims 17 and 19 through 22 perfect and further limit independent claim 14. Claim 17 defines that the sleeve is made of a flexible material. Claim 19 defines that the retainer has a general "U" shape. Claim 20 defines that the retainer is made of a spring material. Claim 21 defines that the retainer has a first end and a second end to form a hollow interior. Claim 22 defines that the first end extends from the sleeve and the second end is movable relative to the first end. Based on this, it is respectfully submitted that claims 17 and 19 through 22 are not obvious and are allowable over the rejection under 35 U.S.C. § 103.

As to claim 23, claim 23 claims the invention as a holder (10) including a cylindrical sleeve (30) having a wall (32) extending longitudinally to form a hollow interior (34) with at least one open end (36,38) adapted to receive a thumb of a hand. The holder (10) also includes a retainer (40) extending from the wall (32) of the sleeve (30). The sleeve (30) and retainer (40) are made of a plastic material to form a monolithic structure that is unitary and one-piece. The retainer (40) is adapted to be attached to and detached from a handle (24) of a paint container (12), whereby the retainer (40) is attached to the handle (24) and the sleeve (30)

receives the thumb of the hand to allow a weight of the paint container (12) to be transferred to a remainder of the hand supporting a bottom of the paint container (12).

Skelton '481, either alone or modified, does not teach or suggest the claimed invention of claim 23. Specifically, Skelton '481 merely discloses a method and apparatus for steadily holding a container in which a loop consists of a strap of flexible material having a swatch of nylon based hook-type fasteners located on one side of the strap at one end thereof and a swatch of nylon based loop fasteners located on the other side of the strap at the other end thereof or a rigid hook-shaped member having an end looped about the container's handle or a double looped strap of flexible material such as polypropylene webbing with a first loop looped about the swing handle and a second looped end for receiving the thumb of a hand. Skelton '481 lacks a cylindrical sleeve having a wall extending longitudinally and a retainer extending from the wall of the sleeve with the sleeve and retainer being made of a plastic material to form a monolithic structure that is unitary and one-piece to be attached to and detached from a handle of a paint container. In Skelton '481, there is no single embodiment that has a cylindrical sleeve having a wall extending longitudinally and a retainer extending from the wall of the sleeve with the sleeve and retainer being made of a plastic material to form a monolithic structure that is unitary and one-piece to be attached to and detached from a handle of a paint container. There is no suggestion or motivation in the art to modify Skelton '481.

There is absolutely no teaching of a level of skill in the paint container art to include a cylindrical sleeve having a wall extending longitudinally and a retainer extending from the wall of the sleeve with the sleeve and retainer being made of a plastic material to form a monolithic structure that is unitary and one-piece to be attached to and detached from a handle of a paint container. Further, there is no motivation in the art to modify the Skelton '481 device

because Skelton '481 operates in an entirely different manner. Contrary to the Examiner, it is not obvious to substitute for the hook 64 of Figure 10 of Skelton '481 with the thumb sleeve shown in Figure 11 of Skelton '481 because such a substitution, if possible, would not allow the rigid hook shaped member 60 to be made of a plastic material to form a monolithic structure that is unitary and one-piece with the cloth strap 70 and/or the end 62 of the member 60 to be attached to and detached from the swing handle 12. In Skelton '481, in the embodiments of FIGS. 10 and 11, both the ends 62 and 72 are permanently attached to the handle of the container and cannot be removed from the handle of the paint container. The Examiner may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967).

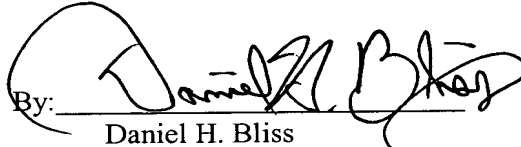
The present invention sets forth a unique and non-obvious combination of a holder for assisting and holding a paint container including a cylindrical sleeve having a wall extending longitudinally and a retainer extending from the wall of the sleeve with the sleeve and retainer being made of a plastic material to form a monolithic structure that is unitary and one-piece to be attached to and detached from a handle of a paint container. Advantageously, the holder that allows a paint container, filled with paint, to be put down quickly, if needed, allows more paint to be held in the paint container without placing direct pressure on the thumb, and is relatively inexpensive to make and use, and if damaged, to be replaced relatively quickly and inexpensively. The reference, if modifiable, fails to teach or suggest the combination of a holder for assisting and holding a paint container including a cylindrical sleeve having a wall extending longitudinally and a retainer extending from the wall of the sleeve with the sleeve and retainer being made of a plastic material to form a monolithic structure that is unitary and one-piece to be

attached to and detached from a handle of a paint container as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness.

Against this background, it is submitted that the present invention of claim 23 is not obvious in view of Skelton '481. The reference fails to teach or suggest the combination of a holder of claim 23. Therefore, it is respectfully submitted that claim 23 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

In conclusion, it is respectfully submitted that the rejection of claims 1, 3 through 5, 7, 10 through 14, 17, and 19 through 23 is improper and should be reversed.

Respectfully submitted,

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Attorney Docket No.: 1617.00001

APPENDIX

The claims on appeal are as follows:

1. A holder for assisting in holding a paint container, comprising:
a cylindrical sleeve adapted to receive a thumb of a hand and having a longitudinal axis; and
a retainer having a wall with a first end connected to said sleeve, said first end being fixed relative to said sleeve, said wall having a second end extending generally perpendicular to said longitudinal axis of said sleeve to overlap a circumferential portion of said sleeve, said retainer being adapted to be attached to and detached from a handle of a paint container, whereby the retainer is attached to the handle and the sleeve receives the thumb of the hand to allow a weight of the paint container to be transferred to a remainder of the hand supporting at a bottom of the paint container.
3. A holder as set forth in claim 1 wherein said sleeve is generally tubular in shape.
4. A holder as set forth in claim 1 wherein said sleeve extends longitudinally to form a hollow interior.
5. A holder as set forth in claim 4 wherein said sleeve has at least one open end adapted to allow the thumb of the hand to extend into said hollow interior.

7. A holder as set forth in claim 1 wherein said sleeve is made of a flexible material.

10. A holder as set forth in claim 1 wherein said retainer has a general "U" shape.

11. A holder as set forth in claim 1 wherein said retainer is made of a spring material.

12. A holder as set forth in claim 1 wherein said first end and said second end form a hollow interior therebetween.

13. A holder as set forth in claim 1 wherein said second end is movable relative to said first end.

14. A holder for assisting in holding a paint container, comprising:
a cylindrical sleeve extending longitudinally to form a hollow interior with at least one open end adapted to receive a thumb of a hand, said sleeve being unitary circumferentially;
and

a retainer extending from and being unitary and one-piece with said sleeve, said retainer being adapted to be attached to and detached from a handle of a paint container, whereby the retainer is attached to the handle and the sleeve receives the thumb of the hand to allow a

weight of the paint container to be transferred to a remainder of the hand supporting a bottom of the paint container.

17. A holder as set forth in claim 14 wherein said sleeve is made of a flexible material.

19. A holder as set forth in claim 14 wherein said retainer has a general "U" shape.

20. A holder as set forth in claim 14 wherein said retainer is made of a spring material.

21. A holder as set forth in claim 14 wherein said retainer has a first end and a second end to form a hollow interior.

22. A holder as set forth in claim 21 wherein said first end extends from said sleeve and said second end is movable relative to said first end.

23. A holder comprising:
a cylindrical sleeve having a wall extending longitudinally to form a hollow interior with at least one open end adapted to receive a thumb of a hand; and
a retainer extending from said wall of said sleeve, said sleeve and retainer being made of a plastic material to form a monolithic structure that is unitary and one-piece, said

retainer being adapted to be attached to and detached from a handle of a paint container, whereby the retainer is attached to the handle and the sleeve receives the thumb of the hand to allow a weight of the paint container to be transferred to a remainder of the hand supporting a bottom of the paint container.